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MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 1st August, 1996, Shravana 10, 1918 (Saka)

The following Act of Parliament received the assent of the President on the 1st August, 1996, and is hereby published for general information:—

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) ACT, 1996

No. 21 OF 1996

[1st August, 1996.]

An Act further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Representation of the People (Amendment) Act, 1996.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

Amendment of section 32.

2. In the Representation of the People Act, 1950, in section 32, in sub-section (*1*), for the words "with fine which may extend to five hundred rupees", the words "with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine" shall be substituted. 43 of 1950.

CHAPTER III

AMENDMENT OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

Amendment of section 8.

3. In the Representation of the People Act, 1951 (hereafter in this Chapter referred to as the 1951-Act), in section 8, in sub-section (*1*),— 43 of 1951.

(*a*) in clause (*j*), the word "or" shall be added at the end;

(*b*) after clause (*j*), the following clause shall be inserted, namely:—

"(*k*) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971;". 69 of 1971.

Insertion of new section 20B.

4. After section 20A of the 1951-Act, the following section shall be inserted, namely:—

Observers.

20B. (*1*) The Election Commission may nominate an Observer who shall be an officer of Government to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted to him by the Election Commission.

(*2*) The Observer nominated under sub-section (*1*) shall have the power to direct the returning officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the result if in the opinion of the Observer booth capturing has taken place at a large number of polling stations or at places fixed for the poll or counting of votes or any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained.

(*3*) Where an Observer has directed the returning officer under this section to stop counting of votes or not to declare the result, the Observer shall forthwith report the matter to the Election Commission and thereupon the Election Commission shall, after taking all material circumstances into account, issue appropriate directions under section 58A or section 64A or section 66.

Explanation.— For the purposes of sub-section (*2*) and sub-section (*3*), "Observer" shall include a Regional Commissioner or any such officer of the Election Commission as has been assigned under this section the duty of watching the conduct of election or elections in a constituency or group of constituencies by the Commission.'.

5. In section 30 of the 1951-Act, in clause *(d)*, for the words "twentieth day," the words "fourteenth day" shall be substituted. Amendment of section 30.

6. In section 33 of the 1951 Act,— Amendment of section 33.

(a) in sub-section *(1)*, for the provisos, the following provisos shall be substituted, namely:—

"Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers";

(b) after sub-sectin *(6)*, the following sub-section shall be inserted, namely:—

(7) Notwithstanding anything contained in sub-section *(6)* or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, 149, 150 or, as the case may be, 151 on the same date.

Amendment of section 34.

7. In section 34 of the 1951-Act, for sub-section (*1*), the following sub-section shall be substituted namely:—

(*1*) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,—

(*a*) in the case of an election from a Parliamentary constituency, a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Schedulted Tribe, a sum of five thousand rupees; and

(*b*) in the case of an election from an Assembly or Council constituency, a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two thousand five hundred rupees:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub- section..

Amendment of section 38.

8. In section 38 of the 1951-Act, for sub-section (*2*) , the following sub-sections shall be substituted, namely:—

(2) for the purpose of listing the names under sub-section (*1*), the candidates shall be classified as follows, namely:—

(*i*) candidates of recognised political parties;

(*ii*) candidates of registered political parties other than those mentioned in clause (*i*);

(*iii*) other candidates.

(*3*) The categories mentioned in sub-section (*2*) shall be arranged in the order specified therein and the names of candidates in each category shall be arranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed..

Substitution of new section for section 52. Death of candidate of recognised political party before poll.

9. For section 52 of the 1951-Act, the following section shall be substituted namely:—

"52. (*1*) If a candidate set up by a recognised political party,—

(*a*) dies at any time after 11.00 A.M. on the last date for making nominations and his nomination is found valid on scrutiny under section 36; or

(*b*) whose nomination has been found valid on scrutiny under section 36 and who has not withdrawn his candidature under section 37 dies,

and in either case, a report of his death is received at any time before the publication of the list of contesting candidates under section 38; or

(*c*) dies as a contesting candidate and a report of his death is received before the commencement of the poll,

the returning officer shall, upon being satisfied about the fact of the death of the candidate, by order, announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and also to the appropriate authority:

Provided that no order for adjourning a poll should be made in a case referred to in clause (*a*) except after the scrutiny of all the nominations including the nomination of the deceased candidate.

(*2*) The Election Commission shall, on receipt of a report from the returning officer under sub-section (*1*), call upon the recognised political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 30 to 37 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations:

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (*1*) of section 37 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment.

(*3*) Where a list of contesting candidates had been published under section 38 before the adjournment of the poll under sub-section (*1*), the returning officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (*2*).

Explanation.—For the purposes of this section, sections 33 and 38, "recognised political party" means a political party recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.'.

Substitution of new section for section 126. Prohibition of public meetings during period of forty-eight hours ending with four fixed for conclusion of poll.

10. For section 126 of the 1951-Act, the following section shall be substituted, namely:—

'126 (*1*) No person shall—

(*a*) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(*b*) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(*c*) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto,

in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(*2*) Any person who contravenes the provisions of sub-section (*1*) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(*3*) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.'.

Amendment of section 127.

11. In section 127 of the 1951-Act,—

(*a*) in sub-section (*1*), for the words "three months or with fine which may extend to one thousand rupees", the words "six months or with fine which may extend to two thousand rupees" shall be substituted;

(*b*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) An offence punishable under sub-section (*1*) shall be cognizable.".

Substitution of new section for section 133. Penalty for illegal hiring or procuring of conveyance at elections.

12. For section 133 of the 1951-Act, the following section shall be substituted, namely:—

"133. If any person is guilty of any such corrupt practice as is specified in clause (*5*) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine."

Insertion of new section 134B. Prohibition of going armed to or near a polling station.

13. After section 134A of the 1951-Act, the following section shall be inserted, namely:—

"134B. (*1*) No person, other than the returning officer, the presiding officer, any police officer and any other person appointed to maintain peace and order, at a polling station who is on duty at the polling station, shall, on a polling day, go armed with arms, as defined in the Arms Act, 1959, of any kind within the neighbourhood of a polling station.

54 of 1959.

(*2*) If any person contravenes the provisions of sub-section (*1*), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(*3*) Notwithstanding anything contained in the Arms Act, 1959, where a person is convicted of an offence under this section, the arms as defined in the said Act found in his possession shall be liable to confiscation and the licence granted in relation to such arms shall be deemed to have been revoked under section 17 of that Act. 54 of 1959.

(*4*) An offence punishable under sub-section (*2*) shall be cognizable.".

Amendment of section 135.

14. In section 135 of the 1951-Act, in sub-section (*1*), for the word "fraudulently", the word "unauthorisedly" shall be substituted.

Amendment of section 135A.

15. Section 135A of the 1951-Act shall be renumbered as sub-section (*1*) thereof and,—

(*i*) in sub-section (*1*) as so renumbered,—

(*a*) for the portion beginning with the words "shall not be less than six months" and ending with the words "extend to three years and with fine" the following shall be substituted, namely:—

"shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine;"

(*b*) in the *Explanation*,—

(*A*) for the words "this section", occurring in the opening portion, the words, figures and letter "this sub-section and section 20B" shall be substituted;

(*B*) in clause (*b*), for the words "prevent others from voting", the words "prevent others from free exercise of their right to vote" shall be substituted;

(*C*) in clause (*c*), for the word "threatening", the words "coercing or intimidating or threatening directly or indirectly", shall be substituted;

(*ii*) after sub-section (*1*) as so renumbered and the *Explanation* thereto, the following sub-section shall be inserted, namely:—

"(*2*) An offence punishable under sub-section (*1*), shall be cognizable.".

Insertion of new sections 135B and 135C.

16. After section 135A of the 1951-Act, the following sections shall be inserted, namely:—

Grant of paid holiday to employees on the day of poll.

"135*B*. (*1*) Every person employed in any business, trade, industrial undertaking or any other establishment and entitled to vote at an election to the House of the People or the Legislative Assembly of a State shall, on the day of poll, be granted a holiday.

(*2*) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (*1*) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(*3*) If an employer contravenes the provisions of sub-section (*1*) or sub-section (*2*), then such employer shall be punishable with fine which may extend to five hundred rupees.

(*4*) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

Liquor not to be sold given or distributed on polling day.

135*C*. (*1*) No. spirituous, fermented or intoxicating liquors or other substances of a like nature shall be sold, given or distributed at a hotel, eating house, tavern, shop or any other place, public or private, within a polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(*2*) Any person who contravenes the provisions of sub-section (*1*), shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both.

(*3*) Where a person is convicted of an offence under this section, the spirituous, fermented or intoxicating liquors or other substances of a like nature found in this possession shall be liable to confiscation and the same shall be disposed of in such manner as may be prescribed.''.

Insertion of new section 151A.

17. After section 151 of the 1951-Act, the following section shall be inserted, namely:—

Time limit for filling vacancies referred to in sections 147, 149, 150 and 151.

"151A. Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

(*a*) the remainder of the term of a member in relation to a vacancy is less than one year; or

(*b*) The Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.".

K. L. MOHANPURIA,
Secy. to the Govt. of India.

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